

Paradigm Changes in Proving Unlawful Acts in Corruption Crimes Following Constitutional Court Decision Number 25/PUU-XIV/2016

Abdullah Sulaiman¹, Dedy Cahyadi², Iwansyah³, Rahmad Prasetyo⁴, Pambudi⁵
absulafdy@gmail.com¹, radenmascip@gmail.com², Iwansyahpermana77@gmail.com³,
rhdpras@gmail.com⁴, pambudi.indag1996@gmail.com⁵

Universitas Islam Negeri Syarif Hidayatullah Faculty of Law¹, Universitas Borobudur,
Indonesia^{2,3,4,5}

Article Info

Received: 2025-01-12

Revised: 2025-02-21

Accepted: 2025-05-27

Keywords:

*Constitutional Court
Decision; State Financial
Losses; Evidence;
Corruption Crimes*

Abstract

The Constitutional Court Decision Number 25/PUU-XIV/2016 has marked an important turning point in the enforcement of corruption law in Indonesia, especially in proving the element of state financial loss. Before this decision, the formal approach that emphasized procedural violations without the need to prove actual losses was still commonly used. However, after the decision, the legal interpretation shifted towards a material approach that required actual loss to prove corruption. This change has quite complex legal and practical consequences, ranging from increasing the burden of proof for public prosecutors, and dependence on the results of audits of state financial institutions to technical challenges in coordination between law enforcers. This study comprehensively examines the development of legal interpretation before and after the Constitutional Court decision, and its impact on the evidentiary process, and formulates strategic steps that can be taken to strengthen the effectiveness of corruption eradication while ensuring legal certainty for the parties.

1. Introduction

Corruption in Indonesia has long been a major enemy in national development because of its systemic impact and damage to all aspects of national and state life. (Setiyawan, 2024) Corruption is not only a crime against state finances, but also a form of betrayal of the people's mandate, creating social inequality, weakening the legal system, and hampering economic growth. (Chazawi, 2018) Therefore, corruption is classified as an extraordinary crime that requires extraordinary handling, both in terms of regulation, law enforcement, and the institutional instruments involved. This status as an extraordinary crime has given rise to various repressive approaches, including the establishment of special institutions such as the Corruption Eradication Commission (KPK) and the application of more proactive procedural law in exposing corrupt practices that are generally hidden and involve abuse of authority. (Adityo, 2024)

In efforts to eradicate corruption, the aspect of evidence plays a central role. Corruption is often carried out covertly, involves power relations, and takes advantage of complex legal loopholes. (Kristiana, 2017) Therefore, evidence becomes a crucial field to legally and convincingly ensnare the perpetrator in the eyes of the law. Unlike other general crimes, evidence in corruption cases often relies on documents, financial audits, expert testimony, and strong legal construction to compile a series of legal events that prove the violation. (Yurizal, 2017) Weaknesses in the evidence process can result in impunity or even the acquittal of the defendant who committed corruption so the right standard of evidence becomes a vital element in maintaining the effectiveness of law enforcement against corruption.

Before the emergence of the Constitutional Court Decision No. 25/PUU-XIV/2016, the approach to the unlawful element in corruption cases tended to be formal. It means that as long as an act is carried out without a valid legal basis, then the act can be considered to have fulfilled the unlawful element, without having to first prove that there is a real state loss. This approach is considered more progressive in eradicating corruption because it does not require law enforcement officers to first wait for the emergence of concrete state losses, but rather simply show abuse of authority or violation of applicable legal regulations. (Faturachman, 2024)

The two main articles that are the main legal basis for eradicating corruption in Indonesia are Article 2 and Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption (Corruption Law). Article 2 paragraph (1) states that anyone who unlawfully commits an act of enriching themselves or others that is detrimental to state finances shall be subject to a minimum of 4 years in prison. Meanwhile, Article 3 emphasizes the abuse of authority, opportunity, or means available to them due to position or status. (Saputra, 2015) These two articles explicitly require the

existence of an element of unlawfulness and an element of state financial loss, but in previous practice, the element of unlawfulness was understood not only as a violation of written laws and regulations but also as unwritten legal norms or general principles of law.

The jurisprudence of the Supreme Court before the Constitutional Court Decision consistently strengthened the formal approach to the element of unlawfulness. In several decisions, the Supreme Court has emphasized that sufficient evidence of an act that violates applicable legal procedures or mechanisms—without having to prove actual state losses—has fulfilled the elements of an unlawful act in the Corruption Law. (Julpandi, 2024) This concept broadens the scope of law enforcement against corruption because law enforcers do not need to present state losses in quantitative form that can be directly measured, as long as it is proven that the act is against the law. However, this approach also raises concerns about the possibility of criminalizing policies or the discretion of public officials that are carried out in good faith but are considered not by procedures. (BJ, 2020)

In addition, in the old approach, proof of mens rea or the perpetrator's evil intent was considered sufficient to prove a criminal act of corruption, even though there had been no real state losses. Thus, the focus of the proof was more directed at the perpetrator's will to abuse authority and gain personal or other people's benefits. State losses were positioned as consequences that did not always have to be actual and concrete, but were quite potential or predicted to occur. This model of proof was considered effective in encouraging a deterrent effect on perpetrators and accelerating the prosecution of corruption cases. (Hatta, 2022) However, after the issuance of the Constitutional Court Decision No. 25/PUU-XIV/2016, this approach underwent significant changes, where real state losses became an absolute element that must be proven in proving a criminal act of corruption.

The application for judicial review of Article 2 paragraph (1) and Article 3 of the Corruption Law in the Constitutional Court Decision Number 25/PUU-XIV/2016 was filed by an applicant who felt that his constitutional rights had been violated due to the inappropriate application of these articles. The applicant argues that the element of "harming state finances" in the two articles is often interpreted broadly and inappropriately by law enforcement officers. (Supriyadi, 2019) As a result, many state officials or policymakers are criminalized even though the actions are not proven to have caused real losses to state finances. (Akbar, 2023) Therefore, this petition aims to obtain legal certainty regarding the interpretation of the element of state financial loss, so that only acts that cause real losses to state finances can be subject to corruption criminal sanctions.

The Constitutional Court in its decision ultimately granted part of the petition submitted, and stated that the element of "harming state finances" in Articles 2 and 3 of the Corruption Law must be interpreted as real or actual state losses (actual loss),

not just potential losses. The Constitutional Court emphasized that an act cannot be immediately considered a criminal act of corruption simply because there is a deviation from procedures or regulations, without being proven that the act causes a concrete reduction in state assets. The Constitutional Court's legal considerations are based on the principle of fair legal certainty (Article 28D of the 1945 Constitution), as well as the protection of human rights so that there is no criminalization of administrative or discretionary actions of officials that do not harm the state. (Saputro, 2024)

This Constitutional Court decision fundamentally changes the previous interpretation of the element of state financial loss in corruption. If previously it was sufficient to show a formal violation of the law, then after the decision, law enforcement officers are required to prove that the loss in question has occurred and is objectively measurable. In other words, the interpretation of the element of loss is no longer a potential loss but must be in the form of an actual loss. Consequently, proof of the state loss can now not only be based on assumptions or predictions but must be based on the audit results of official institutions such as the Audit Board of Indonesia (BPK) or other authorized and legally credible agencies.

This change in interpretation has direct implications for the paradigm of evidence in corruption cases. From previously using a formal approach, now the system of evidence has shifted to being more material. In the formal approach, simply by showing a violation of certain legal rules or administrative procedures, the elements of unlawfulness and state losses are considered fulfilled. However, in the material approach, law enforcement officers must go through a more complex process to prove the real impact of the perpetrator's actions on state finances. The shift certainly requires a more technical, comprehensive method of proof, and is based on valid financial data. (Megawati, 2024)

However, the application of this material approach brings major challenges in court practice. One of the main difficulties is proving that action directly causes real state losses, especially when the losses are indirect, spread, or covered by complex institutional structures. On the other hand, audit institutions such as the BPK cannot always immediately issue definitive state loss reports in fast-paced legal processes. This creates a gap between the need for criminal law proof and the availability of financial evidence, which has the potential to weaken the effectiveness of prosecution in corruption cases. (Setiyono, 2024)

Although the Constitutional Court Decision No. 25/PUU-XIV/2016 aims to strengthen legal certainty and prevent the criminalization of policymakers, on the other hand, it also risks hampering the spirit of eradicating corruption. Law enforcement against corruption can become slower, full of debate, and even lead to impunity if evidence of real state losses cannot be obtained immediately. In this context, law enforcement officers are required to adjust their evidence strategies more carefully and

systematically so that the decision does not become a loophole for perpetrators to escape the law.

Although Constitutional Court Decision No. 25/PUU-XIV/2016 is binding and final, in practice it causes confusion among law enforcement officers, both at the investigation, prosecution, and trial levels. Investigators face difficulties in determining the starting point of real state losses, especially in cases where the financial impact of corruption is not immediately apparent or has not been reflected in official financial reports. Prosecutors as the party proving the criminal elements are also in a dilemma because they have to wait for the audit results or loss reports from authorized institutions, the process of which often takes a long time. On the other hand, judges are required to not only assess whether the elements of an unlawful act are fulfilled procedurally but to carefully evaluate the evidence of state losses submitted, which may be incomplete or indicative.

Another problem that emerged after the ruling was the potential for multiple interpretations of what is meant by "real state losses." There is no single definition that is explicitly agreed upon in the legislation or in the Constitutional Court ruling itself. As a result, each law enforcement officer can have different interpretations in assessing whether an act has caused state financial losses in actual form. It creates legal uncertainty because cases that are substantively similar can result in different decisions depending on the interpretive approach used by law enforcement officers. The potential for differences in interpretation creates a gray area in law enforcement practices, which can benefit perpetrators of corruption or actually harm officials who exercise legitimate discretion.

The imbalance between the spirit of eradicating corruption and the demands of increasingly stringent legal procedures is one of the crucial issues currently being faced. On the one hand, the state needs quick and firm steps to prosecute perpetrators of corruption in order to maintain public trust and the integrity of state institutions. However, on the other hand, the evidentiary procedure that requires real state losses makes the legal process increasingly slow, technical, and vulnerable to legal loopholes. The spirit of aggressive corruption eradication can be hampered by the formal limitations set through this constitutional decision. In such conditions, law enforcement officers are required to be able to maintain a balance between upholding the principle of substantive justice and not ignoring the principles of due process of law guaranteed by the Constitution.

The urgency of this research lies in the urgent need to clarify the legal consequences of changes in the interpretation of the element of state losses in criminal acts of corruption. Academically, this research is important for dissecting the dynamics of the shifting paradigm of criminal law on corruption and the challenges that arise as a result. Meanwhile, practically, this research contributes to strengthening legal instruments and policies that can bridge the interests of eradicating corruption with

the protection of citizens' constitutional rights. This research also has strategic value in providing input for policy formulation, both in the form of technical regulations, interpretive guidelines, and updates to the state loss audit system. Thus, this research occupies an important position in efforts to align policies.

2. Research Method

This study uses an empirical normative legal research method, namely an approach that combines analysis of legal norms (in the form of laws and court decisions) with social realities that occur in the field through empirical data. (Hosnah, 2021) To comprehensively examine the changes in the paradigm of proving the element of state losses after the Constitutional Court Decision No. 25/PUU-XIV/2016, two main approaches are used: the statute approach and the case approach. The statutory approach is carried out by analyzing relevant laws and regulations, especially Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption and other provisions related to proving criminal acts. Meanwhile, the case approach is used to examine court decisions that reflect the application of new interpretations of the element of state losses, both those that occurred before and after the Constitutional Court decision, to understand the extent to which these changes are applied consistently in court.

The specification of this research is descriptive-analytical, which aims to describe systematically and comprehensively the legal problems that arise due to changes in legal interpretation and analyze their impact on law enforcement practices. The data sources in this study consist of primary and secondary data. Primary data is obtained through in-depth interviews and direct observation of investigators, prosecutors, judges, and other legal practitioners involved in handling corruption cases. Meanwhile, secondary data includes primary legal materials (legislation and court decisions), secondary legal materials (legal literature, journals, previous research results), and tertiary legal materials (legal dictionaries, legal encyclopedias). Data collection techniques are carried out through interviews, direct observation of the judicial process, and document studies of regulations and decisions. Furthermore, all data is analyzed qualitatively with an interpretive approach to find patterns, inconsistencies, and relationships between legal norms and empirical reality, to produce valid and relevant conclusions to the problems studied.

3. Results and Discussion

Development of Legal Interpretation of the Element of State Financial Loss in Corruption Crimes Before and After Constitutional Court Decision Number 25/PUU-XIV/2016

The concept of state financial loss is an important element in criminal acts of corruption, especially as stated in Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001. Article 2 paragraph (1) states that:

"Any person who unlawfully commits an act of enriching himself or another person or a corporation that can harm state finances or the state economy shall be punished with imprisonment of at least 4 (four) years and a maximum of 20 (twenty) years..."

Meanwhile, Article 3 states:

"Any person who, to benefit himself or another person or a corporation, abuses the authority, opportunity or means available to him because of his position or position that can harm state finances or the state economy, shall be punished..."

Both articles require the element of being able to harm state finances or the state economy, which was initially understood as potential loss, namely as long as an act has the potential to cause state losses, then this element is considered fulfilled.

The initial interpretation of the element of state financial loss in Article 2 and Article 3 of the Corruption Law tended to use a formal approach, which emphasized the existence of procedural or legal violations without the need to strictly prove real state losses. In practice, investigators and prosecutors only need to show that there has been a violation of laws and regulations and there is an indication of state loss, even though there are no definite figures or final audit results. This approach is reinforced by several Supreme Court decisions before 2016 which emphasized that the element of state loss does not have to be actual, as long as there is a strong indication that points to a reduction in potential revenue or unauthorized use of the budget. (Hartanti, 2023) In the context of determining the existence of state financial losses, the role of the Audit Board of Indonesia (BPK) is central as regulated in Article 23E paragraph (1) of the 1945 Constitution and Article 10 paragraph (1) of Law Number 15 of 2006 concerning the Audit Board of Indonesia, which states that the BPK has the authority to audit the management and accountability of state finances. Furthermore, in Article 1 number 22 of Law No. 1 of 2004 concerning the State Treasury, it is explained that:

"State/regional losses are a shortage of money, securities, and/or goods, which are real and certain in amount, as a result of unlawful acts, whether intentional or negligent."

This definition provides an initial reference for law enforcement officers in determining the elements of state losses. However, although the BPK is the most authoritative institution, in practice other institutions such as the Financial and Development Supervisory Agency (BPKP), the Inspectorate General of

ministries/institutions, and public accountants are also often used as references to determine indications of state losses in the early stages of the investigation.

However, until the issuance of the Constitutional Court Decision No. 25/PUU-XIV/2016, there was still debate about which institution had the most authority to declare state losses. Some opinions assume that only the BPK has the constitutional authority to officially declare state losses. Meanwhile, in investigative practice, law enforcement officers often use audit reports from the BPKP or internal supervisory institutions as a basis for processing cases, even though there has been no official decision from the BPK. This non-uniformity is one of the reasons for the need for further affirmation in the interpretation of the law which was then answered by the Constitutional Court in its decision. (Fikri, 2022)

Before the Constitutional Court Decision No. 25/PUU-XIV/2016, the legal interpretation of the element of state financial loss in corruption cases emphasized the formal approach. In this approach, the element of "can harm state finances" is considered fulfilled if there is a violation of legal provisions or administrative procedures, without having to prove any real or actual losses. This approach was born from the spirit of eradicating corruption which demands effectiveness, so that investigators and prosecutors are not burdened with proving the exact figure of state losses at the initial stage of the legal process. In such conditions, it is sufficient to find evidence of legal irregularities or abuse of authority that opens up opportunities for losses, and the element of state loss is considered fulfilled. (Gunawan, 2024)

This formal approach is strengthened by the jurisprudence of the Supreme Court, including in the Supreme Court Decision No. 2174 K/Pid.Sus/2010, which states that state losses do not have to be actual, as long as there is a potential loss as a result of the defendant's actions. This opinion is supported by several other decisions stating that indications of losses based on BPKP investigative audits or internal agency reports are sufficient to continue the legal process. In many cases, judges do not require audit results from the BPK specifically and focus more on legal logic and the relationship between actions and potential state financial losses. Thus, even though exact figures are not yet available or are still in process, law enforcement officers can continue investigations and prosecutions. (Jawa, 2024)

One landmark case that reflects the strength of the formal approach is the case of alleged corruption in the procurement of medical equipment projects in several regional hospitals. In this case, even though there has been no official loss audit from the BPK, the panel of judges still stated that the element of state loss had been proven because the defendant had violated procurement procedures that led to price inflation (mark-ups). On the other hand, in several cases involving the discretion of public officials, this formal approach has backfired because not all procedural violations have direct implications for state financial losses. This has

drawn criticism from academics and legal practitioners because it has the potential to ensnare officials who do not have malicious intent (*mens rea*) or do not result in real losses. (Mahmud, 2021)

The background to the submission of a judicial review of Article 2 and Article 3 of the Corruption Law in case No. 25/PUU-XIV/2016 stems from concerns about the legal uncertainty that arises due to multiple interpretations of the element of state loss. The applicant, a former Village Head, argued that he was charged with using corruption articles without evidence of real state loss. The applicant felt disadvantaged because the legal approach used emphasized procedural violations, without a clear audit of the loss. Therefore, the applicant asked the Constitutional Court to emphasize that the element "can harm state finances" must be interpreted strictly as a real loss that can be proven objectively.

The Constitutional Court Decision No. 25/PUU-XIV/2016 states that the interpretation of the element of state financial loss in Article 2 and Article 3 of the Corruption Law must refer to losses that actually occur (actual loss), not only based on assumptions or potential. In its legal considerations, the Court emphasized the importance of the principle of due process of law and the principle of legal certainty as guaranteed in Article 28D paragraph (1) of the 1945 Constitution. The Court also emphasized that the use of the potential loss approach without an official audit from an authorized institution can open up space for the criminalization of public officials who exercise administrative discretion legally. Thus, the decision is an affirmation of the protection of the constitutional rights of every citizen in the criminal justice process.

The new interpretation emphasized by the Constitutional Court in this decision provides a more rigid limitation on the element of state loss. The Court stated that state financial losses must be based on real and measurable facts, not just potential. This means that law enforcement officers must present evidence in the form of audits or concrete calculations of losses from authorized institutions, such as the BPK. With this affirmation, the paradigm of proof in corruption crimes has shifted from a formal approach to a material approach, which has major implications for the way investigators, prosecutors, and judges work in handling corruption cases.

Constitutional Court Decision No. 25/PUU-XIV/2016 has a significant impact on the development of legal interpretation of the element of state financial loss in corruption cases. One of the main implications is the shift in approach from formal to material. Previously, the existence of the element of state loss could be determined only from procedural or administrative violations, but after the Constitutional Court's decision, there must be real and measurable state losses. This means that proving corruption is no longer sufficient by showing a violation of the law but must be accompanied by evidence of actual losses to state finances. This shift encourages an increase in the standard of evidence by investigators and public

prosecutors, who must now be able to prove more substantially that there are legal consequences that are detrimental to state finances.

Along with this change in approach, the role of investigative audits has become very central in the process of proving the element of state loss. Investigative audits are carried out by institutions such as the Audit Board of Indonesia (BPK), the Financial and Development Supervisory Agency (BPKP), or government agency inspectorates, to determine the amount of losses objectively and accountably. The results of this audit are used as important evidence in proving the element of actual loss in court. However, because only the BPK has the constitutional authority to declare state losses according to Article 23E of the 1945 Constitution, there has been debate regarding the validity of audits from other institutions. Although the Constitutional Court did not explicitly limit audits to the BPK, its evidentiary standards were still tightened to ensure accuracy and legal certainty.

After the Constitutional Court's decision, judicial jurisprudence began to show a shift in direction in assessing elements of state losses. For example, in a number of corruption court decisions after 2017, judges rejected prosecutors' charges that only presented potential losses without being supported by an official investigative audit. On the other hand, there were also decisions that still accepted audits from the BPKP with the argument that as long as the audit was carried out professionally and measurably, it could be used as a basis for evidence. The consistency of the application of this jurisprudence still varies between jurisdictions, reflecting the lack of uniformity of interpretation, especially regarding the standard for who can declare state losses legally and convincingly.

When compared as a whole, there are fundamental differences between legal interpretations before and after Constitutional Court Decision No. 25/PUU-XIV/2016. Before this ruling, the formal approach allowed law enforcement officers to charge corruption perpetrators more quickly because it was sufficient to show a violation of the law or administrative deviation. No evidence of real losses was needed, as long as there was an indication that the action could cause losses. In contrast, the material approach that emerged after the Constitutional Court ruling required a real impact on state finances, so the proof process became more technical, dependent on investigative audits, and required objective tracing of the economic impact.

This change in approach also affected the burden of proof for investigators and prosecutors. Previously, law enforcement officers could use simple causal logic that unlawful actions could result in state losses. However, now, prosecutors must present concrete evidence of the amount of losses and who committed them, complicating the proof process, especially in the early investigation stage. This has the potential to slow down the process of eradicating corruption, but on the other hand, strengthens the aspect of procedural justice by preventing the misuse of

corruption articles against acts that do not necessarily have a real impact on state finances.

For defendants, this change provides a stronger defense space. Defendants can argue that even though there has been a procedural violation, there has been no real state loss, or the loss has not been legally proven by an authorized institution. In some cases, such a defense is accepted by the judge, especially if the prosecutor's charges are not supported by an investigative audit or if there are differences of opinion between the audit results of the BPK and BPKP. Thus, this new interpretation strengthens the position of the accused in demanding a fair legal process, while encouraging law enforcement to be more careful and precise in every stage of the evidence.

Legal and Practical Implications of the Changes in Interpretation for the Process of Proving and Enforcing Corruption Crimes in Court

Constitutional Court Decision No. 25/PUU-XIV/2016 has created a significant shift in the paradigm of proving the element of state financial loss in corruption crimes. Previously, the approach was formal, namely by simply showing the existence of an unlawful act such as a violation of procedures, administrative deviations, or abuse of authority, without the need to prove any real consequences for state finances. However, after the decision, the Constitutional Court emphasized that the element of state loss must be interpreted as a real loss, not just a potential or risk of loss. This shift requires more detailed and factual quantitative and qualitative evidence and has a direct impact on the construction of the indictment by the public prosecutor and the evidence strategy used in the trial process.

The main implication of this shift is reflected in the formulation of the indictment which must now state the amount of state loss specifically, complete with the basis for calculation and supporting documents. It is no longer sufficient for the public prosecutor to state that the defendant's actions have the potential to harm the state, but it must be proven that the consequences of these actions have caused real state financial losses. Therefore, the evidence becomes more complex and technical, requiring investigators to work with investigative auditors, and state financial experts, and prioritize forensic evidence. Investigators and prosecutors are required to understand not only the legal aspects but also the technical aspects of state accounting and finance to convince judges.

This paradigm shift also demands an adjustment in the working methods of law enforcement officers. Investigators can no longer focus solely on elements of malicious intent or abuse of authority but must ensure that their actions have an impact on state finances and can be proven concretely. Likewise, judges, who previously could rely solely on legal reasoning, must now be more careful in evaluating evidence of state losses, including assessing the validity and accuracy of

the audit. This creates a new dynamic in the corrupt criminal justice system that is more technocratic, which on the one hand can strengthen the principle of legality and protection of the defendant's human rights, but on the other hand, risks weakening the effectiveness of law enforcement if it is not balanced with the technical readiness of law enforcement officers.

In an institutional context, this change also has consequences for the authority of the Audit Board of Indonesia (BPK). Based on Article 23E of the 1945 Constitution, the BPK is an institution authorized to examine the management and accountability of state finances. Therefore, there is an assumption that only the BPK is legally entitled to declare state losses. However, in practice, investigators and prosecutors also often use audit results from the Financial and Development Supervisory Agency (BPKP), inspectorates, or internal supervisory institutions as the basis for proving state losses. It rise debate because the Constitutional Court in its ruling did not explicitly limit that only the BPK can determine state losses, but still emphasized the importance of valid, objective, and testable audits in court.

The polemic regarding audits from the BPKP or other institutions impacts whether or not an audit is valid as evidence in court. The Supreme Court in several of its rulings accepted the results of BPKP audits as long as they met the principle of accountability and were carried out by competent auditors. However, there are still inconsistencies in jurisprudence that can create legal uncertainty. Some judges require an audit from the BPK as the only valid evidence of state losses, while others are sufficient with a professional investigative audit. This puts law enforcement officers in a technical and legal dilemma when deciding which institution should be involved in proving state losses.

This change raises the standard of proof for public prosecutors. In the context of general criminal law, the principle of *in dubio pro reo* (doubt is on the side of the accused) becomes more dominant, so that prosecutors must prove with a high degree of certainty that state losses are real and a direct result of the defendant's actions. Technical obstacles arise when losses cannot be immediately calculated or when the cause of the loss is the result of collective action and not of one individual. It often weakens the position of prosecutors in proving their charges and even encourages acquittals or acquittals for defendants. Compared to the previous principle of proof which was looser and based on legal conclusions, this new approach demands accuracy, objectivity, and cross-disciplinary cooperation in law enforcement practices.

Constitutional Court Decision No. 25/PUU-XIV/2016, which requires proof of the element of state loss as an actual loss, has a direct impact on the effectiveness of eradicating corruption in Indonesia. One of the most obvious impacts is the possibility of a decrease in the number of corruption cases that can be processed legally. Previously, cases that only showed procedural deviations or administrative violations could be immediately prosecuted, but now it must first be proven whether

the act caused concrete state financial losses. In practice, proving this element requires time, resources, and cross-institutional cooperation, which are not always available or run smoothly, resulting in many cases being stopped at the investigation or inquiry stage.

The risk that arises from this requirement for proof of actual loss is the increasing potential for impunity for perpetrators of corruption, especially in cases involving complex budget mechanisms or indirect proof of losses. When the element of loss cannot be proven quantitatively, even though there has been abuse of authority or bribery, the perpetrator can escape the law or be acquitted. It raises the tension between the principle of effective law enforcement and the principle of legal certainty. On the one hand, this new approach provides protection against arbitrary actions by officials, but on the other hand, it weakens legal instruments in eradicating corruption is often systemic and covert.

Practical challenges in the field are also increasingly complex. One of the main problems is the limited technical capacity of law enforcement officers in conducting investigative audits or assessing the validity of loss reports. Prosecutors and investigators often rely on external institutions such as the Audit Board of Indonesia (BPK) or the Financial and Development Supervisory Agency (BPKP) to issue audit report results (LHP) or audit reports. This dependence causes problems when these institutions are slow, unresponsive, or even have different technical views. In addition, differences in the application and interpretation of audit results by the courts also create jurisprudential incoherence that adds uncertainty to legal practice and increases the space for the defendant's defense to attack technical aspects of evidence.

In the context of the defendant's defense strategy, this change in interpretation significantly strengthens their position. Defendants now have more room to deny the existence of state losses or question the method and validity of the calculation of losses submitted by the prosecutor. In addition, many defendants have utilized judicial review, judicial review (PK), and pretrial motions to drop charges on the grounds that the element of actual loss has not been met. This change also strengthens the application of the principle of non-self-incrimination and presumption of innocence, which, although fundamental principles of criminal law, are now the main basis for fending off lawsuits on the grounds that state losses have not been legally and convincingly proven.

In response to these challenges, law enforcement agencies such as the Corruption Eradication Commission (KPK), the Attorney General's Office, and the Police have begun to implement various forms of policy adaptation. One of them is strengthening cooperation with investigative audit institutions and increasing the capacity of investigators and prosecutors to understand the technical aspects of public finance and accounting. In several cases, the KPK has involved independent experts or academics to conduct second opinions on audits submitted as evidence.

In addition, several institutions have begun to prepare internal technical guidelines to ensure uniformity of interpretation in handling cases after the Constitutional Court's decision. This effort reflects that legal changes must be accompanied by technical and managerial updates.

The role of the Supreme Court is very crucial in creating consistency in jurisprudence after this change in interpretation. As the highest institution in the judicial system, the Supreme Court can set standards for the application of law through cassation decisions and legal edicts. When there are different views of judges in the corruption court regarding what constitutes real losses or the validity of audits from non-BPK institutions, the Supreme Court must provide definite direction so that there is no disparity in decisions. On the other hand, the government and the DPR can also consider revising the Corruption Law or drafting more technical implementing regulations to bridge the confusion in practice that arises from the new constitutional interpretation. This is important to ensure that the principle of legal certainty remains in line with the effectiveness of corruption eradication in Indonesia.

Efforts That Can Be Made to Overcome Legal Uncertainty and Strengthen the Effectiveness of Evidence in Eradicating Criminal Acts of Corruption Following the Constitutional Court Decision

Strengthening regulations and reformulating legal norms are crucial initial steps to align law enforcement practices with the Constitutional Court's new interpretation of the element of state financial loss. An evaluation of Article 2 and Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption needs to be carried out to clarify the scope of state losses so as not to give rise to multiple interpretations. This reformulation can be carried out through the preparation of derivative norms such as Government Regulations or Presidential Regulations that provide explicit limitations on the definition of actual loss and the measurement tools for its losses. In addition, the role of the Supreme Court is important in issuing Supreme Court Regulations (Perma) or Supreme Court Circulars (SEMA) to provide guidelines for judges in deciding cases consistently with the Constitutional Court's decisions.

Within this framework, the preparation of technical guidelines for evidence by law enforcement agencies such as the Corruption Eradication Committee, the Attorney General's Office, and the Police is an equally important follow-up step. These internal guidelines must explicitly describe the method of proving the element of state loss by referring to the actual interpretation of the Constitutional Court. Standardization of the use of investigative audits as the main evidence needs to be regulated formally so that there is no debate about its validity in court. This also requires increased cross-institutional cooperation with state audit institutions such

as the BPK and BPKP and allows the involvement of independent auditors in certain circumstances. The SOP (Standard Operating Procedure) for proving state financial losses agreed upon by law enforcers can prevent differences in interpretation that cause inconsistencies in the investigation and prosecution process.

On the other hand, changing the approach to proof from formal to material requires increasing the capacity of law enforcement officers, especially in technical and financial forensic aspects. Investigators, prosecutors, and judges should be provided with technical training that includes an understanding of government accounting mechanisms, investigative audit methods, and interpretation of state financial reports. In addition to training, a strategy must recruit financial forensic experts and independent auditors as part of the law enforcement team to support the evidence process in the field. Law enforcement agencies can also strengthen special units or task forces that have expertise in analyzing and calculating state financial losses not to be overly dependent on external institutions.

Furthermore, strengthening the role and coordination of state audit institutions is an inseparable part of the system of proving the elements of state losses. The BPK and BPKP need to clarify the boundaries of their respective jurisdictions under Article 23E of the 1945 Constitution and Law No. 15 of 2006 concerning the BPK and Presidential Regulation No. 192 of 2014 concerning the BPKP. Clarity regarding the authority of investigative audits and who is authorized to declare state financial losses is important to prevent debate in the proof process. Increasing the independence and effectiveness of audit institutions in conducting investigative audits also need to be strengthened, including their speed in responding to requests from law enforcement officers. To avoid overlap, a standard cooperation protocol between audit institutions and law enforcement officers must be formulated immediately.

In line with the above efforts, consistency of jurisprudence through the role of the Supreme Court is very important to maintain the stability of legal interpretation. The Supreme Court can strengthen the direction of legal policy by issuing legal fatwas and cassation decisions that affirm the standards of proving the elements of state losses after Constitutional Court Decision No. 25/PUU-XIV/2016. This step will assist the first instance and appellate courts in making decisions that are in line with the principle of legal certainty. Apart from that, the Supreme Court needs to harmonize the practice of corruption criminal trials throughout Indonesia to avoid disparities in the application of the law. Transparency and dissemination of important decisions to law enforcers, academics, and the wider public will strengthen shared understanding and become the main reference in handling corruption cases.

The role of academics and civil society in supervising and strengthening the legal system should not be ignored. Legal research conducted by academics can provide

critical input on policies or regulations that are ineffective in responding to the challenge of proving elements of state losses. Civil society also plays an important role in conducting public oversight, encouraging accountable policy reforms, and ensuring that the eradication of corruption remains within the constitutional corridor. Discussion forums, cross-sector advocacy, and collaboration between stakeholders can create a more collective understanding of the law and be responsive to developments in legal interpretation following the Constitutional Court's decision.

4. Conclusion

The Constitutional Court Decision Number 25/PUU-XIV/2016 has brought significant changes to the construction of the law of evidence in corruption cases, especially in the interpretation of the element of "state financial loss" as regulated in Article 2 and Article 3 of the Corruption Law. Before this decision, the formal approach was sufficient to prove unlawful acts without having to show real state losses. However, after the decision, the paradigm of evidence shifted towards a material approach that requires actual loss as an element that must be proven concretely in court. This change creates a dilemma for law enforcement officers, both in normative and technical aspects, because it creates legal uncertainty and increases the burden of proof that was previously not a major focus. The implications that arise not only affect the effectiveness of law enforcement but also open up space for the weakening of corruption eradication because many cases ultimately cannot be continued due to the absence of definite and measurable evidence of loss.

To answer these legal and technical challenges, comprehensive strategic steps are needed. Normatively, reformulation of the norms of Articles 2 and 3 of the Corruption Law needs to be carried out to be more in line with the interpretation of the Constitutional Court and to ensure legal certainty. The government and the Supreme Court are also encouraged to prepare implementing regulations and technical guidelines for evidence that can be used as references by law enforcement officers. On the other hand, strengthening the technical capacity of investigators, prosecutors, and judges is a priority through special training and expert support from independent forensic auditors. In addition, it is necessary to build an integrated work system between state audit institutions and law enforcement, as well as consistency in court jurisprudence so that there is no disparity in case handling. Collaboration with academics and civil society is critical in providing constructive input and supervision of the implementation of legal policies. All those steps will be key in bridging the principle of legal certainty and the effectiveness of eradicating corruption in Indonesia.

References

- Adityo, I. &. (2024). *Reformasi Hukum dan Pembuktian Kasus Korupsi Gratifikasi di Indonesia*. Yogyakarta: Deepublish.
- Akbar, A. W. (2023). Kepastian Hukum Praperadilan Penetapan Tersangka dalam Sistem Peradilan Pidana di Indonesia. *Jurnal Studi Interdisipliner Perspektif*, 23(1), 122.
- BJ, A. M. (2020). *Pemberantasan Korupsi: Fungsi Dan Kewenangan Kepolisian Negara Republik Indonesia Dalam Tindak Pidana Korupsi Guna Mengembalikan Kerugian Keuangan Negara Di Indonesia*. Bandung: Pustaka Reka Cipta.
- Chazawi, A. (2018). *Hukum Pidana Korupsi di Indonesia*. Jakarta: Rajawali Pers.

- Faturachman, F. A. (2024). Pertanggungjawaban dan Penegakan Hukum Pidana Korporasi dalam Tindak Pidana Korupsi di Indonesia. *AKADEMIK: Jurnal Mahasiswa Humanis*, 4(2), 197–212.
- Fikri, H. (2022). Implementasi Undang-Undang Nomor 20 Tahun 2001 Tentang Tindak Pidana Korupsi Perspektif Kepastian Hukum. *Jurnal Hukum Mimbar Justitia*, 7(2), 194-209.
- Gunawan, I. &. (2024). Penyebab Tingginya Kasus Korupsi Dana Desa Dalam Sudut Pandang Teori Struktural Fungsional Talcot Parson (Study Literatur). *Journal Of Human And Education (JAHE)*, 4(4), 609-618.
- Hartanti, E. (2023). *Tindak Pidana Korupsi*. Jakarta: Sinar Grafika.
- Hatta, M. S. (2022). *Tindak Pidana Korupsi: Materi Pengantar*. Banjar Masin: PT. BDProject.
- Hosnah, A. U. (2021). *Karakteristik Ilmu Hukum dan Metode Penelitian Hukum Normatif*. Depok: Rajawali Pers.
- Jawa, D. M. (2024). Tantangan Dalam Penegakan Hukum Tindak Pidana Korupsi Di Indonesia. *Jurnal Usm Law Review*, 7(2), 1006-1017.
- Julpandi, H. (2024). Kedudukan Hukum Whistle-Blower Dalam Penanggulangan Tindak Pidana Korupsi di Indonesia. *CENDEKIA: Jurnal Hukum, Sosial & Humaniora*, 2(2), 487-507.
- Kristiana, Y. (2017). *Independensi Kejaksaan dalam Penyidikan Korupsi*. Jakarta: Citra Aditya.
- Mahmud, A. (2021). *Pengembalian Aset Tindak Pidana Korupsi: Pendekatan Hukum Progresif*. Jakarta: Sinar Grafika.
- Megawati, M. R. (2024). Implementasi Fungsi Kepolisian Selaku Penyidik Tindak Pidana Korupsi. *Journal of Lex Philosophy (JLP)*, 5(2), 570-588.
- Saputra, R. (2015). Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Korupsi. *Jurnal Cita Hukum*, II(2).
- Saputro, D. (2024). Kedudukan Praperadilan dalam Perspektif Kepastian Hukum. *Jurnal Ilmiah Wahana Pendidika*, 10(6), 121.
- Setiawan, W. B. (2024). *Hukum Pidana Korupsi*. Jakarta: Sada Kurnia Pustaka.
- Setiyono. (2024). Problematika Penetapan Saksi Pelaku yang Bekerjasama pada Perkara Korupsi Ditinjau dari Sistem Peradilan Pidana Terpadu. *Lex Jumadica*, 21(1), 123.
- Supriyadi. (2019). Perlindungan Hukum Whistleblower Dalam Upaya Penanggulangan Tindak Pidana Korupsi. *Law Review*, 53(9), 89–99.
- Yurizal. (2017). *Tindak Pidana Korupsi di Indonesia*. Malang: Media Nusa Creative.